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No. 04-351

Supreme Court, U.S.
FILED
OCT 14 2004
OFFICE OF THE CLERK

In The
Supreme Court of the United States

TANYA L. LACY AND RICHARD BROOKS,

Petitioners,

v.

CSX TRANSPORTATION, INC.,
A VIRGINIA CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Appeals Of West Virginia

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioners have submitted the following question for consideration by this Court: "Does a federal regulation requiring railroads to provide motorists an 'active' signal of danger at grade crossings equipped with automatic warning devices preempt state negligence law and constitute a legally binding standard of care in an action based on the federally created duty?" Pursuant to Supreme Court Rule 15, CSX Transportation, Inc. objects to Petitioners' question not only as misleading given the argument presented in their Petition, but irrelevant as the jury in the underlying matter considered the statutes at issue including the Federal Railroad Safety Act and the Highway Safety Act of 1973 and determined that CSX Transportation, Inc. had not violated the crossing regulations. In reality, Petitioners are asking this Court to create a new right, duty, and standard under the regulations at issue, overturn the jury's verdict and instruct the underlying trial court to enter judgment in their favor merely because the Petitioners do not agree with the jury's verdict. As such, Petitioners' writ must be denied.

SUPREME COURT RULE 29.6 DISCLOSURE STATEMENT

Respondent CSX Transportation, Inc. is a non-governmental corporate party. CSX Corporation owns one hundred percent (100%) of the stock of CSX Transportation, Inc.

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INTRODUCTION

Petitioners present to this Court a matter that has now been tried to a jury on two separate occasions, and each time the jury has found in favor of the Defendant CSX Transportation, Inc. (CSXT). In the first trial the Petitioners unsuccessfully argued that CSXT was negligent for failing to install different signal circuitry at the crossing which would activate the automatic gates based on the speed and distance a locomotive was from the crossing at issue. The jury having retuned a verdict in favor of CSXT on that issue, the Petitioners urged the jury in the second trial to find CSXT negligent for allowing a single locomotive to approach the Fifth Street crossing eastbound at the same time a freight train was approaching westbound and thus violated certain federal regulations with regard to crossings and active warning devices. The second jury was fully instructed on each of the federal statutes and regulations currently at issue, and which the Petitioners alleged the railroad violated, and being so advised returned a verdict that the railroad had not violated the regulations at issue and as such was not negligent in this matter.

Following this second verdict in favor of CSXT Petitioners first appealed to the Supreme Court of Appeals of West Virginia which refused to hear their appeal, and now they appeal to this Court. It is important to note that at no point in their Petition for a Writ of Certiorari do the Petitioners contend that the jury was improperly instructed or that the regulations provided were inapplicable or not properly formatted for consideration. Instead the Petitioners argue to this Court that it should displace the jury's determination in this matter and, based upon an incomplete citation to federal crossing regulations,

determine that CSXT is liable to the Petitioners as a matter of law. Petitioners, however, present absolutely no support for this position beyond mere conjecture and a misleading interpretation of the federal regulations. In essence, Petitioners are asking this Court to ignore two previous jury determinations that CSXT was not responsible for this incident, that the jury was properly instructed on the regulations at issue, and that the jury was provided with the opportunity to consider the very arguments Petitioners now raise to determine if CSXT was negligent in this matter. As the clear weight of authority demonstrates that the Petitioners' position is not only illogical, but also unsound and therefore their writ to this Court must be denied.

STATEMENT OF FACTS

Petitioners spend the majority of their Petition to this Court twisting the facts of the underlying incident at issue in this matter in the hope of portraying CSXT as purposefully and deliberately violating federal regulations. The facts as presented by the Petitioners, however, fail not only to present a complete picture of the events of January 11, 1995, but fail to provide an accurate picture of CSXT's activities in this area on the night of the incident in question. Specifically, this matter arose from an incident in which Petitioners, Tanya Lacy and Richard Brooks, were injured in a railroad grade crossing accident over nine years ago, on January 11, 1995, at the Fifth Street Crossing in St. Albans, West Virginia. Despite Petitioners' statements to the contrary, the visibility for a motorist at this crossing is unimpaired and the crossing is protected with both flashing lights and automatic gates.

Thus, there was no reason that a motorist would not see a train approaching from either direction. (Petition for Writ of Certiorari at p. 4.) It is important to note that at the time of the accident it is undisputed that the automatic warning devices located at the crossing were active and fully functioning, presenting any oncoming motorist with a warning that a train was approaching the crossing. There was no reason why any reasonably alert motorist, who is operating their vehicle in a reasonable and prudent manner consistent with West Virginia law, should ever be involved in a collision with a train at this crossing.

Third Avenue is on the north side of CSXT's tracks and runs parallel to the railroad tracks. The railroad tracks at the crossing in question consist of two sets of mainline tracks with sidetracks on either side. At this crossing CSXT uses a fixed distance signal circuit, which triggers the protective devices when a train reaches a certain distance from the crossing[1] regardless of the speed of the approaching train. The system is designed, in compliance with federal regulations, to allow a minimum of 25-30 seconds of warning to pedestrians and automobile traffic using the crossing that a train is approaching. *See* 49 C.F.R. §234.255. Further, in addition to the above described active warning devices, the Fifth Street crossing is also protected by the statutorily required crossbucks, round advance highway railroad crossing warning signs, diagonal warning signs, painted

[1] Petitioners assert that the single engine moving eastbound activated the flashing lights and lowered the automatic gates rather than the westbound freight train that was ultimately involved in the accident. CSXT believes that the evidence was inconclusive as to which train activated the signals, but for purposes of this appeal it is irrelevant which train actually triggered the warning devices.

highway markings, mast-mounted flashing light and a bell. The passive warning signs and pavement markings were installed with the use of federal funds and the installation of these signs was specifically approved by the Federal Highway Administration (FHWA),[2] a fact, which is undisputed by the parties in this matter.

The accident at issue occurred at approximately 11:30 p.m. as Cacoe Sullivan drove west on Third Avenue. Petitioners assert in their brief that Ms. Sullivan approached the crossing and made a careful and informed decision to go around the flashing lights and gates due to the speed of the single locomotive and her knowledge of the crossing at issue. The evidence in this matter, however, demonstrates that Ms. Sullivan was not operating her vehicle in a careful and informed manner, but was driving with the sole intent of not having to stop for the oncoming locomotive. It is undisputed in this matter that upon reaching the intersection just north of the crossing Ms. Sullivan drove through a stop sign without pausing, through the flashing lights and around the lowered automatic gates in an effort to beat the locomotive approaching the crossing.[3] Apparently, neither Sullivan nor either of the Petitioners looked to see if any other trains were

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[2] As a result any claim that the railroad should have installed additional or different warning devices at this crossing is preempted by federal law. *See Norfolk Southern Rwy. v. Shanklin*, 529 U.S. 344 (2000).

[3] It should be noted that at no point in the Petitioners' eight (8) pages of facts presented to this Court do they discuss the fact that Ms. Sullivan drove through a stop sign and into the crossing at issue without as much as a pause to see if it was safe to proceed. If she had brought the car to a stop at any point prior to entering the crossing, it is likely she would have noticed the approach of the second locomotive in this matter, thus preventing any accident.

approaching the crossing before Sullivan violated West Virginia law and drove onto the crossing. None of the occupants of the car objected to the actions of Sullivan. At the time of the accident both trains were sounding their whistles and bells in full compliance with West Virginia law. Unfortunately, as the westbound freight train was so close to the crossing when Sullivan drove through the stop sign and around the gates, the train was unable to stop prior to the impact.

Petitioners reiterate in this Petition the same argument they unsuccessfully put forth during the second trial of this matter, specifically that CSXT violated certain federal regulations by allowing two trains to operate inside the crossing signal circuitry at the same time and therefore the trial court erred in not granting them judgment as a matter of law. It should be noted that after being presented with this argument and having been provided the federal regulations at issue, the jury returned a verdict in favor of CSXT finding that they had not violated the federal regulations with regard to their operations on the night of the incident in question. Petitioners are in reality asking this Court to ignore the jury's determination and create a new standard under the Federal Railroad Safety Act and the Highway Safety Act of 1973 and thus find CSXT negligent as a matter of law. The argument follows that, having allegedly violated various federal regulations, this Court should find as a matter of law that CSXT was negligent, either through application of the concept of negligence *per se* or strict liability. Petitioners' argument is not only contrived but requires a violent distortion of the language of several federal regulations, and with regard to one specific regulation an outright abrogation of the regulation.

(Petition for Writ of Certiorari at p. 20.) *See* 49 C.F.R. §234.1. Contrary to Petitioners' assertion, reading the regulations as proposed would create more confusion not less and as such their Petition must be denied.

REASONS FOR DENYING THE PETITION

I. There Is No Split Authority Between the Circuits on the Issue Presented to Require This Court to Accept the Petition in This Matter And Petitioners Have Failed to Present Any Logical Argument As To Why This Court Should Create a Unique Federal Common Law Regarding Crossing Accidents.

Petitioners seek relief from this Court by asserting that there is a sufficient split of authority with regard to the application of the regulations in question to support their application for a writ to this Court. In support of this theory, Petitioners cite two cases, one an unpublished case from the United States Court of Appeals from the Sixth Circuit and the other from the Supreme Court of Ohio.[4] *See Jones v. Consolidated Rail Corporation*, No. 96-3828, 1997 U.S. App. LEXIS 36759 (6th Circuit December 18,

[4] It should be noted that the Petitioners' counsel in the instant matter was also counsel for the plaintiffs in the two actions cited as support for their proposition that there is a split of authority in the way the regulations are being interpreted by the Courts.

1997), *cert. denied*, 525 U.S. 870 (1998)[5] and *Whitman, et al. v. Consolidated Rail Corporation*, 715 N.E.2d 546 (Ohio 1999). Initially it should be noted that not only are the *Jones* and *Whitman* cases factually dissimilar to the cases at bar, they fail to discuss the regulations at issue in this matter and utterly fail to address Petitioners' claims as to the requirement of a federally created negligence *per se* or strictly liability jury instruction.

Specifically, both *Jones* and *Whitman* involved locomotives that had actually stopped at the crossings after activating the gates and lights. As noted above, both trains approaching the crossing at issue in this matter were operational and continued to be so up and until the time of the incident in this matter. Rather than providing an analysis, as alleged by Petitioners, with regard to the regulations at issue, neither case cited even addresses the issues presented in this matter. In *Jones* the Sixth Circuit refused to even address the plaintiff's arguments as to the application of negligence *per se* or a misapplication of the regulations at issue, as they were untimely. *Jones* 1997 U.S. App. LEXIS 36759 at *4-*5. In *Whitman*, the Ohio Supreme Court did not even address a single regulation that is at issue in this matter. *See Whitman, et al. v. Consolidated Rail Corporation*, 715 N.E.2d 546 (Ohio 1999). It is clear that there is no split of authority on this matter, because as more fully described below the regulations at issue are clear and unambiguous and specifically define a railroad's duty with regard to the facts alleged in

[5] It should be noted that Federal Rules of Appellate Procedure for the Sixth Circuit disfavor the citing of unpublished opinions, a fact that this Court took note of in *Rose v. Hodges*, 423 U.S. 19, 23 (1975) (Brennan, J. dissenting). *See also*, 6 Cir. R.28.

the case at bar. Further, it is also clear that CSXT did not violate any regulation in this matter and as such Petitioners' appeal to this Court must be denied.

Petitioners also assert that this Court should take this opportunity to develop a federal common law with regard to crossing regulations that would "benefit both the public at large and the railroad industry." (Petition for Writ of Certiorari at p. 24.) Petitioners' assertions, however, are fatally flawed as there is no logical reason in this matter to suggest that the findings of two juries with regard to the lack of liability on the part of CSXT in light of the federal regulation at issue should be displaced. In other words, this Court should not even get to Petitioners' argument as to the creation of a "federal common law" with regard to crossing accidents as CSXT did not violate any regulation at issue in this matter. Specifically, Petitioners are asking this Court to not only develop a "federal common law" as to crossing incidents, but to then take the regulations at issue and construe them in such a manner as to find that CSXT has violated those regulations. There is no logical basis in this matter to suggest that either approach is appropriate.

Further, Petitioners reliance on *Boyle v. United Technologies Corporation*, 487 U.S. 500 (1988) is not only misplaced due to the fact that CSXT has not violated any regulation in this matter, but the creation of a federal common law would be inappropriate as there has been no credible demonstration made by Petitioners that a "'significant conflict' exists between an identifiable 'federal policy or interest and the operation of state law,' or the application of state law would 'frustrate specific objectives' of federal legislation" *Id.* at 507 (internal citations omitted). Petitioners have admitted that the first portion of

this part of the *Boyle* test is not applicable in this matter, choosing instead to focus on the second aspect. (Petition for Writ of Certiorari at p. 23.[6]) With regard to this aspect Petitioners have presented no support for the proposition that state law would in any way frustrate specific objectives of federal legislation. As more fully set forth herein, CSXT complied completely with all of the regulations at issue in this matter such that there was no determination with regard to state law necessary in this matter. In reality, Petitioners are asking this Court to set aside any duties or obligations that a motorist might have under state law, and hold railroads strictly liable for any accident occurring at a crossing.[7] Such an interpretation is not only contrary to existing federal law, but would require a total disregard of the statutes and regulations at issue in this matter. As such Petitioners' writ to this Court must be denied.

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[6] In *Boyle* this Court crafted a two prong test with regard to the establishment of a federal common law noting that there must be "an area of uniquely federal interest" and that there must also be a finding that either a significant conflict between an identifiable federal policy or interest and the operation of state law or that the application of state law would frustrate specific objectives of federal legislation. *Boyle v. United Technologies Corporation*, 487 U.S. 500, 507-08 (1988).

[7] Petitioners are, through this argument, simply seeking from this Court what they have been unable to get from two separate juries. This argument also ignores the concept of federal preemption that is interwoven into the fabric of these regulations. *See Shanklin*, 529 U.S. 344 (2000). Through *Shanklin* and other cases, state law in this area has been preempted by the federal regulations at issue. As such, there can be no "significant conflict" because the federal law is the only relevant law.

II. Petitioners' Argument As to Negligence *Per Se* Is Irrelevant, As The Jury Correctly Found That CSXT Did Not Violate Any Federal Regulations with Regard to the Incident at Issue In This Matter.

Petitioners have repeatedly misused 49 C.F.R. §234.209, passed eleven days prior to the accident at issue, along with a patchwork of other regulations and parts thereof, to create a strained interpretation in order to persuade this Court to overturn the jury's verdict that was based upon proper jury instructions. As noted above, the Petitioners' argument throughout not only their Petition to this Court, but throughout the underlying matter as well, is that CSXT violated 49 C.F.R. §234.209, and as such they are entitled to judgment as a matter of law in this matter either through the application of strict liability or negligence *per se*.[8] Petitioners' argument, however, must fail as it is not only conceptually flawed, but would place the entire federal regulatory framework on its head. Specifically, 49 C.F.R. §234.209 deals with interference with the normal functioning of crossing systems and states in relevant part:

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[8] Prior to the jury's determination, CSXT moved for a directed verdict based on federal preemption pursuant to this Court's holding in *Norfolk Southern Railway Co. v. Shanklin*, 529 U.S. 344 (2000). CSXT argued that the federal regulations preempted state tort law with regard to the Petitioners' underlying cause of action and therefore, CSXT was entitled to judgment as a matter of law. The lower court, however, disagreed and as noted above provided the jury with the agreed upon relevant regulations. The jury thus rendered CSXT's argument moot as it determined that CSXT was not negligent in this matter and had not violated any of the federal regulations at issue.

§234.209 Interference with normal functioning of system

(a) The normal functioning of any system shall not be interfered with in testing or otherwise without first taking measures to provide for safety of highway traffic that depends on normal functioning of such system.

(b) Interference includes, but is not limited to:

(1) Trains, locomotives or other railroad equipment standing within the system's approach circuit, ***other than normal train movements or switching operations***, where the warning system is not designed to accommodate those activities.

(2) Not providing alternative methods of maintaining safety for the highway user while testing or performing work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system.

49 C.F.R. §234.209 (Emphasis added).

The Petitioners' basic argument is that the single switcher locomotive interfered with the normal functioning of the Fifth Street system merely because it was approaching the crossing at the same time as another train. Petitioners' argument, however, must fail as the plain language of the regulation itself excludes from the definition of interference "normal train movements"

including switching operations. *See* 49 C.F.R. §234.209(b)(1).[9] The slower moving switcher engine, while not engaged at switching at the time of the accident, was thus a normal train movement though the crossing circuit and did not qualify as an interference with the normal function of the crossing system. The Petitioners have offered no logical support for their assertion that the movement of the single eastbound engine was not a normal train movement and instead offer merely conjecture and a misleading interpretation of federal regulations as support for their positions in this matter.[10] The undisputed evidence in this matter is that the movement of the eastbound single engine was a normal train movement and as such Petitioners' argument is irrelevant as there was no violation of the regulations at issue.

Further, evidence that the regulation does not apply in this situation comes from the explicit inclusion of "standing" trains, locomotives or equipment in the circuit system within the scope of the regulation. This is strong evidence that the Federal Railway Administration, in enacting the regulation, was aware of situations involving multiple trains in the circuit path at the same time and

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[9] Petitioners in their brief fail to point out to the Court the full language of the regulation at issue and fail utterly to address the fact that the regulation at issue covers CSXT's activities on the night of the incident in this matter and unambiguously demonstrate that CSXT was in compliance with those regulations.

[10] In fact the Petitioners cite only six cases in their entire Petition to this Court, of which only one has any arguable relevance to the matters asserted herein; an unpublished case from the United States Court of Appeals for the Sixth Circuit upholding CSXT's position as to the regulations at issue. *See Jones v. Consolidated Rail Corporation*, No. 96-3828, 1997 U.S. App. LEXIS 36759 (6th Circuit December 18, 1997), *cert. denied*, 525 U.S. 870 (1998).

chose to prohibit trains and other equipment from "standing" in the circuit path. The regulators did not choose to prohibit multiple trains from moving inside the same circuit path while in normal movement. Had the regulators wanted to prevent multiple trains from moving inside the same circuit path at the same time they knew how to do so. However, they chose instead to exclude from the operation of the regulations normal moving trains. Despite the overwhelming weight of authority against their position the Petitioners argue, although not included with the argument portion of their Petition, but instead in their Statement of the Case, that other regulations provide the background by which 49 C.F.R. §234.209 must be interpreted as they have suggested. One regulation discussed by Petitioners is 23 C.F.R. §646.214(b)(3)(i). That regulation provides in relevant part:

> §Design.
>
> (3)(i) Adequate warning devices, under §646.214(b)(2) or on any project where Federal-aid funds participate in the installation of the devices are to include automatic gates with flashing light signals when one or more of the following conditions exist:
>
> (A) Multiple main line railroad tracks.
>
> (B) Multiple tracks at or in the vicinity of the crossing which may be occupied by a train or locomotive so as to obscure the movement of another train approaching the crossing.
>
> (C) High speed train operation combined with limited sight distance at either single or multiple track crossings.

(D) A combination of high speeds and moderately high volumes of highway and railroad traffic.

(E) Either a high volume of vehicular traffic, high number of train movements, substantial numbers of school buses or trucks carrying hazardous materials, unusually restricted sight distance, continuing accident occurrences, or any combination of these conditions.

(F) A diagnostic team recommends them.

(ii) In individual cases where a diagnostic team justifies that gates are not appropriate, FHWA may find that the above requirements are not applicable.

23 C.F.R. §646.214.

This regulation requires that if a state orders the upgrade of warning devices at a crossing that upgrade shall include the installation of automatic gates if federal funds are used. *Id.* Thus, if a state is going to spend federal money to upgrade a crossing with multiple mainline tracks they must install automatic gates unless a diagnostic team decides otherwise. Both automatic gates and flashing lights were in place at the Fifth Street Crossing. Despite this fact, the Petitioners have focused on the term "adequate" in the regulation to argue that a warning cannot be "adequate" under federal law unless they give a positive or active signal of a specific approaching train. According to Petitioners, the signals must change aspects anytime a train enters the circuits, even if another approaching train has already activated the signals. Petitioners, however, cite no federal regulation or

case law as support for this proposition, and it is undisputed that no signal system in use in the United States changes aspect when a second train enters the circuit.[11] The lights continue to flash and the automatic gates remain down. The signals correctly are warning that a train or trains are approaching. In fact, the installation of automatic gates at a crossing with multiple mainline tracks, as opposed to only flashing lights, is done precisely because it is possible that two trains may be approaching the crossing at the same time. Thus, ironically, if Petitioners' interpretation of the regulations were correct, and it is a violation of federal law to allow two trains to approach a crossing at the same time, there would never be a need to install automatic gates at a crossing because two trains should never be approaching the crossing at the same time.[12]

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[11] Petitioners have also included a discussion concerning Constant Warning Time technology in their petition to this Court. (Petition for Writ at pp. 15-16.) Such discussion, however, is irrelevant to the matters asserted herein as Petitioners not only explicitly stipulated that evidence of constant warning time technology would not be admissible at trial, they represented to the court below that they had no intention of offering evidence as to that technology. Further, even if such technology had been installed at the crossing at issue, it would not have prevented the accident, as the gates and lights would have still have been activated at the time that Ms. Sullivan approached the crossing and she still would have driven onto the crossing as she did not look in the direction in which the locomotive that struck her vehicle was approaching prior to proceeding across the railroad tracks.

[12] Further, even assuming *arguendo* that the Petitioners are correct, all railroad crossings protected by only cross bucks or other passive warning devices would violate this regulation. This is clearly not the case. *See generally*, *Morris v. Baltimore and Ohio Railroad*, 349 F.Supp. 649 (S.D.W.Va. 1972).

To overcome the fact that 23 C.F.R. §646.214 makes no mention of multiple trains occupying a circuit at the same time, Petitioners have turned to a second regulation, 23 C.F.R. §646.204. That regulation states in pertinent part:

> §646.204 Definitions.
>
> For the purposes of this subpart, the following definitions apply:
>
> > Active warning devices means those traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices as well as manually operated devices and crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train.
> >
> > * * *
> >
> > Passive warning devices means those types of traffic control devices, including signs, markings and other devices, located at or in advance of grade crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train.

23 C.F.R. §646.204.

Again however, nothing in this regulation speaks to a situation in which two trains occupy a signal circuit at the same time. Petitioners' focus on the language in the active warning device definition as one which displays "to motorists a positive warning of the approach or presence of a train," proves nothing. The regulation requires only that the signals provide warning of the approach of "a train," not "the train" that ultimately struck the Petitioners' vehicle. The regulations nowhere require that notice be given of the approach of one train as opposed to another

approaching from a different direction. On the day of the accident the signals did provide warning of the approach of a train and Ms. Sullivan ignored those warnings and tried to beat a train across the crossing. This is not a violation of any federal regulation on the part of CSXT and two juries consistently so found.

Petitioners have also referenced 49 C.F.R. §234.225 as a regulation allegedly violated by CSXT. That regulation provides:

> §234.225 Activation of warning system.
>
> A highway-rail grade crossing warning system shall be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time for the normal operation of through trains before the grade crossing is occupied by rail traffic.

49 C.F.R. §234.225.

Petitioners' argument focuses on the language in the regulation that a highway-rail grade warning system "shall be maintained to activate in accordance with the design of the warning system". Petitioners argue that the design of the warning system was to change aspect on approach of a train and that when the second train entered the circuit the signals could not change aspect because they were already activated and were already warning motorists that a train was approaching. 49 C.F.R. §234, however, is entitled "Grade Crossing Signal System Safety" and governs only the testing and inspection of the mechanical equipment of the signal system. It has no application to the movement of trains through a signal

system. Section 234.1 defines the scope of this regulation and states in part:

> This part imposes ***minimum maintenance, inspection and testing standards for highway-rail grade crossing warning systems***. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions the railroad must take when such warning systems malfunction.

49 C.F.R. §234.1. (Emphasis added).

At no place in any of these regulations does the FRA require that the railroad operate its railroad in such a manner that the train which is ultimately involved in an accident be the one that activates the grade crossing warning system. And as stated above, there is no signal system in use in the United States that would change aspect when a second train enters the circuit. Like all other regulations cited by Petitioners, this regulation was not violated by CSXT in the present action and as such their Petition to this Court must be denied.

CONCLUSION

Petitioners have presented no compelling reason to this Court as justification for the grant of a writ of certiorari. There is no split of authority with regard to the issues presented to this Court and there is no logical reason for this Court to create a federal common law with regard to crossing accidents. Further, two previous juries have determined, after being provided with the regulations at issue, that CSXT did not violate the regulations

and was not responsible for the accident at issue. Petitioners' writ to this Court must accordingly be denied.

Respectfully submitted,

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